

# **CUSTOMARY LAW-FORMAL LAW INTERFACE: IMPACT ON TRIBAL CULTURE**

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## **INTRODUCTION**

Most tribes of the Northeast combine allegiance to the formal legal system of the Indian Constitution with adherence to their tradition or customary law in their civil, social and cultural life. It is true of tribes all over India but is so particularly in the Northeast. The customary law is among the most distinctive features of the tribes of this region. They have been subjected to economic, social, political and religious pressures but less than in Middle India. Such pressures have eroded many of their systems but most continue to retain their customary law to which the State has accorded constitutional recognition in Nagaland and Mizoram. Others live according to it without formal recognition but want the State to grant them constitutional recognition.

Because of the double allegiance, many tribes face two challenges. On one side they would like to reverse what they perceive as a policy of neglect by strengthening their traditional institutions. On the other they have to cope with the fact that the dynamics of the interface with the formal system have changed also their customary law and traditions. Some feel that the changes have been imposed on them and express their dissatisfaction with this reality by demanding recognition of their tradition or in the form of movements for autonomy or self-determination. The present paper will try to understand this interface and see in what manner it has affected the basics of their culture and identity especially class and gender relations.

## **CUSTOMARY LAW AND TRIBAL CULTURE**

Regardless of its formal status, most tribes regulate their community and social affairs according to the customary law and treat it as integral to their culture and basic to their identity. This law reinforces the tribe's age-old traditions and binds it together through normative rules by regulating the social and personal relations of its members. Through the institutions such as the village council based on it, the leaders manage the internal affairs of the village. Culture is a community's expression of its worldview i.e. its interpretation of the reality around it or what can be called its philosophy, expressed through its customs, social relations and organisation, language, rituals, festivals, dress, ornaments and arts. It culminates in its identity. Both the customary law and culture have changed over time (Fernandes, Pereira and Khatso 2005: 22).

### ***Customary Law***

There is no universally accepted definition of a customary law. It can be described as a set of rules through which a tribe practises its culture and expresses its worldview. It is "an established system of immemorial rules which had evolved from the way of life and natural wants of the people, the general context of which was a matter of common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the chief and his counsellors, their sons and their sons' sons (sic), until forgotten, or until they became part of the immemorial rules..." (Bekker 1989: 11). It governs a person's marriage, divorce, inheritance, child custody, etc as well as community relations such as tenurial rights over forests, lands, water bodies and other natural resources (Singh 1993: 17).

Thus, a customary law is the habitual course of conduct of a society and contains dos and don'ts based on its norms, practices and usages, mechanisms such as taboos, sanctions, social rituals, culture, public posture and ethics of each individual. These norms thus restrain their pattern of behaviour and regulate the social, cultural and religious aspects of the individual and the family. (Visto 2003: 5). Basic to the customary law is its acceptance by the community. The laws may begin as customs with localised application but are accepted slowly by the rest of the community through a gradual process over a long period if it feels that its introduction is good for it or does it no harm They are mandatory and enforceable by the tribal chiefs while a custom is not enforceable (Narwani 2004: 31). Because of the continuity it gives to the tribal community, the customary law becomes basic to its identity (Cobo 1986).

### ***Culture and the Customary Law in the Northeast***

However, the interface with the formal law has changed also the culture of many Northeast tribes. By culture one means “that entire range of institutions, artefacts and practices that make up our symbolic universe. In one or another of its meanings, the term will thus embrace art and religion, science and sport, education and leisure. By convention, however, it does not embrace the range of activities normally deemed either ‘economic’ or ‘political’” (Milner and Browitt 2003: 5). Others disagree with this stand. Gerrit Huizer (1979: 3), for example says “During the last decade it has become increasingly difficult to deny that anthropology has anything to do with politics.” He cites persons like Kathleen Gough to conclude that, anthropology or the study of culture is a child of imperialism. He quotes others like Beals to state that much research on culture has been done for the armed forces and that it is intrinsic to the security apparatus (ibid: 4). Milton Singer (1972: 16-21), analyses history to show how culture is part of a people’s worldview or interpretation of the surroundings and that it conditions their understanding of other peoples. Thus, one does not have a single view of culture. One can agree with Milner and Browitt that it is the “entire range of institutions” without excluding politics or economics from it. We add that it is intrinsic to identity.

All the elements of the customary law such as the rules and regulations governing marriage, property rights and other social relations are elements of the culture of a community, expressed in the form of laws. They protect its worldview and value system by giving them a concrete form. Thus the customary law becomes intrinsic to its identity and culture. The main features of a tribe’s culture are community ownership, equity and a relatively high status (but not equality) of women. The interface with the formal law affects all these elements. As Milner and Browitt (2003: 25-26) say, in this interface a community both interprets other forms according to its own worldview and changes its own systems. Elements of the customary law change because the stronger “modern” culture imposes itself on their tradition (Fernandes and Barbora 2002: 85-86).

However, the encounter with the “modern” formal law is not uniform throughout the Northeast. Most tribes of the region live according to their customary law but only a few have been constitutionally recognised. In 1963 the 13<sup>th</sup> Amendment to the Constitution recognised the customary laws of Nagaland through Article 371A. The 53<sup>rd</sup> amendment of 1986 recognised those of Mizoram through Article 371G. This recognition includes laws governing marriage, divorce, inheritance and other social and cultural practices and rights like community ownership. No Act

of the Union Parliament concerning the religious or social practices, procedures, administration of justice involving their customary law and ownership and transfer of land and resources applies to them unless their legislative assemblies agree to it<sup>1</sup>.

Other provisions are made through the Sixth Schedule that applies to the whole of Meghalaya and the Karbi Anglong and N. C. Hills districts of Assam. Some other tribes of Assam and Tripura have district autonomous councils (DAC) without the Sixth Schedule. Some elements that are specific to the Sixth Schedule or the customary law have not been granted to the DACs outside the Sixth Schedule areas while the DACs in the Sixth Schedule areas have transferred to themselves powers such as control over land, forests and other natural resources. Under their customary law they belong to the village council. Most other tribes of Assam, Manipur and Arunachal Pradesh (AP) live according to their customary law without State recognition. The Manipur tribes have some protective mechanisms while the AP tribes only have the administrative rules framed in the colonial age that cannot be called protective mechanisms (Barooah 2002: 69).

### ***Land Relations, Customary Laws and Tribal Culture***

Apart from their legal status and the presence or absence of protective mechanisms, the general state of the tribal customary laws varies according to the nature and extent of their application and the manner in which they are invoked and adhered to. Besides, changes introduced in the colonial age and continued after 1947 have modified their customary law and traditions, and have, by implication, changed many values governing their culture. Among the first to change are land relations because except in the Sixth Schedule areas, the formal law recognises only individual ownership while central to the culture of most tribes is community control over the common property resources (CPR). Since the culture of equity and the relatively high status of women depend on the CPRs, changes in the management have implications for these values.

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<sup>1</sup> The provisions of Article 371A for Nagaland, and Article 371G are almost identical. Article 371G reads: 'notwithstanding anything in this Constitution – (a) no Act of Parliament in respect of – (i) religious or social practices of the Mizos, (ii) Mizo customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Mizo customary law, (iv) ownership of land, shall apply to the state of Mizoram unless the Legislative Assembly of the State of Mizoram by a resolution so decides...'. This provision was a result of the accord between the Government of India and the Mizo National Front, signed on 30 June 1986, ending two decades of insurgency. Article 371A was the result of a similar accord on Nagaland in 1963.

Despite the commonality of a community ethos, the land tenure system is not uniform all over the region. Some tribes have complete community-based ownership and others combine individual with clan ownership. Among the former are the Aka who lacked the very concept of individual ownership till recently and only had usufructuary rights. Each family cultivated as much land as it needed in the *jhum* season after which it reverted to the community. However, a family could use wetlands on the banks of the river for settled agriculture but it continued to belong to the village (Fernandes and Bharali 2002: 22-23). Among the latter are the Angami of Nagaland and the Dimasa of Assam who combine community with individual ownership. The Garo of Meghalaya made a distinction between the regular residents of a village and strangers. The former could cultivate as much land as they needed but the latter required the *nokma's* (chief heiress) permission and had to pay a tax. In theory land remained with the owner-lineage but was in practice with an individual family as long as it cultivated it (Majumdar 1987: 158-159). Traditionally the Karbi villages did not have a fixed boundary or name since they kept shifting. Communal ownership was the norm among them (Saha 1987: 21-23). The Boro followed the Ahom custom of allotting 3 *purahs* (about an acre) of land to each family in return for free labour for about a third of the year (Roy 1995: 27).

Community ownership was basic to intra and inter-generational equity as well as the relatively high status of women. When a community controls the resource, every family is able to use it according to its need since it cultivates land according to the number of mouths to feed. Community ethos ensured inter-generational equity because they treated even individually owned land as their community livelihood coming down from the ancestors that they could use to meet their needs but had to preserve for posterity according to ecological imperatives (Baviskar and Attwood 1998: 255-264). Studies show that tribal natural resource management was by and large geared to this need. For example traditionally *jhumia* tribes cultivated only up to 20-degree slopes and planted root crops before the rains to ensure soil protection. Then followed other crops harvested in different months in order to ensure food supply for most of the year till fruits, edible leaves and roots became available (Das 2001: 8-10). Most tribes left the plot fallow for 18 years after cultivating it for 3 years in order to let forests regenerate. Only the Tripura and some other tribes in the predominantly bamboo growing regions followed a five-year cycle suited to that crop (Banerjee, Das Gupta and Roy 1986: 26-27). Some tribes in Mainland India practised also bush-fallow *jhum*. They left the plot fallow for 5-6 years for bushes, not forests, to grow (MRD 2006: 46). One is not aware of this system anywhere in the Northeast. *Jhum* is considered environmentally healthy for the hilly terrain.

Before the *jhum* season, the village council made up of men alone decided which area was to be cultivated that year, which family was to get how much land according to the number of mouths to feed, which family with excess labour would help which one with very few adults and the day before which cultivation would not begin. After it the man of the house chose the plot and performed the worship to mark the beginning of cultivation. At this stage the woman took charge of production and organised work. As a result, gender-based division of work was more gender friendly among the *jhum* cultivators than in settled cultivation-based communities (Fernandes and Menon 1987: 68-70). In settled agriculture, the man does what is considered difficult work such as ploughing and digging. Back breaking work like transplantation and harvesting that involves long hours of standing in wet fields is left to women. In *jhum*, on the contrary, hoeing, digging and other difficult work is shared by men and women. Even keeping watch at night that is considered dangerous work is shared in the sense that the whole family shifts to the *jhum* field at that time (Fernandes 1994: 135-137).

Differences did exist so did inequalities. For example, the tribal woman's status was higher than in caste societies but she was not equal to men. That too had exceptions. For example, despite their CPR based *jhum* economy, traditionally Aka women's status was low (Fernandes, Pereira and Khatso 2005: 94-98). So one cannot make a statement about all the tribes with no exception. One can only say that if resources like land, forests and water bodies are community owned women have a say in their management. The relatively high status it confers on them is based on their role as economic assets in the family, not in their society. Most tribal traditions kept a clear separation between the family and society. Women were in charge of the family production and economy while men controlled social power (Menon 1995: 101). Even the matrilineal tribes like the Khasi, Garo and Jaintia of Meghalaya are patriarchal. Descent and inheritance are through women, they are uxorilocal but social power is with men. They control the village council and other decision-making bodies and also take decisions concerning land alienation (Barak 1997: 162-163).

## **IMPACT OF THE INTERFACE ON TRIBAL CULTURE**

The interface of the customary law with the formal systems has to be situated in the context of an egalitarian society that also had seeds of inequality. Some inequalities such as women's subordinate status have been modernised. Among the forces influencing these changes are the individual-based formal laws, administrative systems, education and religion. Most changes began

in the colonial age. For example the office of the village leader or *gaonburah* created two centres of power since he is rarely the same as the traditional chief. Its other examples are colonisation and appropriation of their common lands and forests through military campaigns or legal fictions, and their eviction from their territories. These changes are at times accelerated by the rapid integration of their economies with the national and global markets especially today in the age of globalisation. This rapid integration continues to expose them to economic exploitation because they are either excluded from the processes of trade and governance or are marginal actors in them (Roy 2005). This section will study some of their implications for land relations, equity and women's status.

### ***Individual Ownership and Equity***

New land relations are not only an economic measure but also the beginning of new power equations in the tribe. The first is class formation in their egalitarian societies and the second is strengthening of patriarchy because it usually transfers power over land from the community to a few men, usually from the elite. The first steps towards it were taken in the colonial age with the enactment of individual ownership based land laws that turned the CPRs into State property. Their basis is the colonial principle of the eminent domain. Its first facet is that land without an individual *patta* is State property. The second is that the State alone has the right to define a public purpose and deprive even individual owners of their assets (Ramanathan 1999: 19-20). In this view land is a commodity for construction and cultivation while in the tribal worldview it belongs to an ecosystem with the local community at its centre.

The formal law ignores this view and imposes its own outlook on them with no understanding of their customary law. This view prevailed because the objective of colonialism was to turn the colony into a supplier of capital and raw material for the British Industrial Revolution and a captive market for its finished products. With that in view the colonial regime enacted in the 19<sup>th</sup> century land laws in order to exploit the resources to suit the need of changing its economy to achieve monopoly over land for schemes such as coalmines, coffee and tea plantations, railways and roads. The process of turning land into a commodity in order to transfer it for colonial purposes began with the *Permanent Settlement 1793* and culminated in the *Land Acquisition Act 1894* that remains in force today (Upadhyay and Raman 1998).

However, the colonialist left the hill areas of the region more or less untouched since he needed them more for their taxes and handicrafts than for land. For example, after the conquest of

Manipur in 1891 he kept its hill areas directly under the British Crown and entrusted village administration to the chieftain. The *Manipuri (Meitei) Maharaja* claimed absolute ownership of all land in the Valley. The regime recognised him as the ruler but exercised much control over land in the Valley (Guite 2000). Similarly, the colonialist who needed land in Assam for tea gardens at first and petroleum later enacted the *Assam Waste Land Settlement Rules 1838* to make its acquisition at a low price easy. That resulted in massive land alienation among the Ahom and ethnic Assamese as well as the Boro and other Kachari tribes (Bora 1986: 46-49).

Then *The Assam Land and Revenue Regulations 1886 (AL&RR)* that superseded the Settlement Rules of 1870 and 1883 made tribal land alienation easy (Shimray 2006: 12-13). AL&RR became the basis for other States where the need to occupy tribal land arose mainly after 1947. So it was promulgated in Manipur and Tripura as the *Manipur Land Revenue and Land Reform Act, 1960* and the *Tripura Land Reform and Land Revenue Act, 1960* without changing its basic structure (Das 1968: 13). Other areas have measures such as the Sixth Schedule and recognition of the customary laws that can protect land if implemented properly.

### ***External Alienation***

The AL&RR facilitated tribal land alienation both to the State in the name of development projects, to the immigrants and to the settlers. For example in Tripura most tribal land is CPRs but it is considered State property according to the individual-based law. As a result, by the late 1960s its indigenous tribes had lost over 60 percent of their land to Hindu Bengali migrants from Bangladesh who encroached on their CPRs. Because of it the tribal proportion in Tripura has declined from 58 percent in 1951 to 31 percent in 2001. Amid such encroachment and conflicts with the settlers that followed, in the mid-1970s, the State announced the Gumti dam that submerged 46.34 sq. km of their land. They opposed it but were forced out of their land. By official count it displaced 2,558 families with *pattas*. Another 5,500 to 6,500 CPR dependent families were not counted. The insurgency in Tripura that continues till today is attributed to such land alienation (Bhaumik 2003: 84-85).

Immigration is an issue in Assam too. The 2001 census shows 40 lakh persons in the State over and above the natural growth compared to 1971. Some 18 lakhs of them (45%) are Bengali speaking Muslims presumably of Bangladeshi origin and 22 lakhs (55%) Nepali and Bihari Hindus (Fernandes 2005: 3238). What matters in this analysis is not the religion and origin of the immigrants but the legal status of land that makes encroachment easy. Much of it is tribal

CPR that are considered State property except in the Sixth Schedule areas. Immigrants can occupy it with impunity. (Fernandes and Pereira 2005: 141-142). Since there have been similar attacks on tribal land in most States, the people of the region view the growing number of immigrants as a threat to their economy (Baruah 2005: 38-39).

Development projects too have a similar impact as the example of the Dumbur dam shows. A recent study on development-induced displacement in Assam 1947-2000 showed that by official count water resources, refugee rehabilitation, environment protection, defence, transport, industries and other projects used 3,91,772.9 acres 1947-2000. The reality, as brought out by the study is not less than 14,01,184.8 acres (Fernandes and Bharali 2006: 77). More than 10 lakh acres are not counted because they are CPRs that have been the sustenance of the tribes and others for centuries. By official count alienation of this land affected 3,43,262 persons. The study showed that their number is not less than 19,09,368 (ibid: 108). The 15.5 lakh persons who have not been counted in the official files inhabited the 10 lakh acres of CPRs. It was their sustenance before the law turned them into encroachers in their own habitat.

A result of such land alienation to outsiders is shortages and impoverishment that change their culture of sustainable use of the natural resources. Because of the shortages caused by land alienation, communities that had hitherto used the resources according to human needs and environmental imperatives, begin to overuse them by cutting trees for firewood or timber, often under timber smugglers and contractors. With competition beginning for the limited resources, the culture of sharing and of using them according to each one's need is weakened. Each family has to look after itself. The woman was an economic asset because she worked on the land and in the forests lost to the projects. That was also the basis of her relatively high status. With its loss she loses both her economic utility and social status (ibid: 180-181).

Another result is ethnic conflicts, most of which arise from the shortages caused by land loss to the immigrants and development projects. Because of the close link with land, many tribes of the region view the shortages as attacks on their culture and identity and interpret conflicts as modes of protecting them. In order to protect their livelihood, they rewrite their history to show that they themselves are the original inhabitants of a given area. Based on this history they lay exclusive claims to its resources. For example, both the Dimasa and the Naga claim

Dimapur as a land they once ruled. Some Boro leaders claim that since they are the Boro Kachari are the first inhabitants of Assam, they alone have rights in that State (Daimary 2002: 2). Alienation of land, culture and identity and the resultant indigenous claims are the bases of the Naga-Kuki conflict in Manipur (Fernandes and Bharali 2002: 52-55), the Bodo-Santhal and Dimasa-Hmar tension in Assam (*The Telegraph*, 23<sup>rd</sup> April 2003) and the Tripura tribal demand for a homeland (Bhaumik 2003: 84).

In other words, conflicts result because the local people try to defend their livelihood by reacting at first to outsiders who, they feel, prosper at their cost and then by competing among themselves for the scarce resources. Exclusive claims existed in the past too because a tribe is essentially territory related and tries to defend that territory against others. That culture of self-defence has been modernised by re-writing their history and laying exclusive claims over all the resources, not for the survival of the tribe but in order to gain access to modern benefits.

### ***Internal Alienation and Individual Ownership***

Given above are some implications of land loss to outsiders. The process continues also within the community. The very act of a few members of their elite monopolising community land is a major change in their culture of equity. This change occurs among them in spite of their customary law being in vogue because only recognition by law does not ensure protection of their livelihood. The elite among them that takes control of all decision-making interprets the customary law to its own benefit. The change takes different forms in the region.

The Boro are a tribe with a CPR tradition and their customary law has not been recognised. Among them change caused by this interface has taken the form of internalisation. Though the individual-based formal law is in vogue among them for a century, even today a large number of them continue to live on the CPRs. Most of them call themselves encroachers, not CPR dependants (Fernandes and Pereira 2005: 52). A few individuals among them make use of this contradiction to appropriate more than their due share of that land. Some Aka individuals have started moving away from their community tradition by appropriating wetlands on the riverbanks and treating them as individual property without a *patta*, thus denying access to others who need it (Fernandes, Pereira and Khatso 2005: 7). Similar processes are visible among the Dimasa whose elite are moving towards individual *pattas*. One of their leaders has appropriated 200 acres by depriving others of their due (Barbora 2002).

Among the forces facilitating this change is the mode of implementing the Sixth Schedule. The administration uses its individual-based culture in these areas too. For example, by treating the *gaonburah* as the owner of all land though he only represents the village. Besides, decisions on land have been transferred from the village council to the DAC. Both the DAC and one person, the *gaonburah* can be influenced to give *pattas* to individuals as one sees in the N.C. Hills and Garo Hills. The individual-centred approach of different State bodies is another step in the culture of *pattas* entering their tribes. In the N. C. Hills the Coffee Board gives subsidies and loans only to individuals (Barbora 2002: 1287). However, a voluntary agency has introduced oranges on a commercial basis in some of their villages without changing the ownership pattern. Some families in these villages accept individual ownership and also confer inheritance rights on women. Thus the trend towards individual *pattas* goes hand in hand with new land use without changing the ownership pattern drastically (Fernandes and Pereira 2005: 37).

In the East Garo Hills, in the 1990s the Rubber Board, the administration and the financial institutions gave subsidies and loans to individual owners and “heads of families” by which they meant men in this matrilineal tribe. To study its impact two decades later we compared some families in East Garo Hills with others in West Garo Hills. Around a third in the former are landless and income disparities are high among them. The demand for male inheritance that began in the 1980s is growing more in East than West Garo Hills. The families in West Garo Hills that live according to their tradition have not emulated the villages in the N. C. Hills that have combined commercial crops with their traditional ownership pattern (Fernandes, Pereira and Khatso 2005: 10-11).

Some of these processes also result in a shorter *jhum* cycle and the consequent shortages. In most of Mainland India, the cycle has come down to six years (Fernandes 1994: 140-141). The cycle is getting shorter in many part of the Northeast but not as much as in Mainland India. A bigger population, land alienation and reservation of forests are among its causes in Tripura and Karbi Anglong. Other processes cause it in other States (MRD 2006: 52).

### ***Change in the Culture of Equity***

The first result of the changeover without adequate preparation of the community is a transition from their culture of equity to class formation. Individual *pattas* are a tool in it. In other words,

what changes their culture is not individual ownership in itself but imposition of the formal law without adequate preparation. The failure to prepare them for this interface results in class formation in their egalitarian societies. It also shows that only legal recognition through the Sixth Schedule does not ensure protection of their livelihood. Through defective implementation, for example by giving loans and subsidies only to individual owners, the Boards take the Sixth Schedule away from its objective of protecting their community assets. The tribal elite too accept individual-based modernisation unquestioningly in order to get these benefits. But the masses by and large lose their traditional rights without any other gain.

On the other side, the effort of a voluntary agency in encouraging some Dimasa villages to grow oranges without changing their land ownership pattern shows the possibility of modernising their tradition. The basic issue in it is not individual or community ownership in its pristine form but equity. It can be maintained even with individual ownership if a community ethos is retained. For example, in the Dimasa tradition, an individual family is allowed to use a plot of land on which it plants trees, as long as the trees survive. By planting oranges some families have thus appropriated that land as long as those trees last. However, they took this decision as a community and are planting oranges under its control unlike the individuals among their elite who monopolise the CPRs by depriving others of access to them.

Besides, the law is not the only component in the process of class formation. Also other factors such as education contribute to it. Their approach is by and large individual-oriented. That is not a negative value in itself. It is acceptance of this value without linking it to their community ethos that results in class formation. The legal changes bring all these components into one whole. Besides, the customary law is basic to tribal identity. As a result, changes in it are an attack on their culture and identity. Hence one has to find ways of allowing the law to change within their culture of equity, not necessarily by preventing individual ownership.

### ***Impact on Women's Status***

Since, as stated above individual ownership also reduces the little power women have in their tradition over their CPRs, gender relations become an area of concern around modernisation. For example, before the Rubber Board began to provide subsidies and loans only to individual owners and heads of families understood as men, the *Nokma* or chief heiress used to take decisions on land though men played an important role in them. With the State dealing with men alone in decisions

on land transfer, the *Nokma's* husband has become the main decision-maker especially in the distribution of individual *pattas* (Fernandes and Pereira 2005: 201-202).

The tribal leaders, especially the elite, consolidate such change triggered by external inputs like the formal law and education, by internalising the dominant ideology. More than in the past, men interpret the customary law in their own favour. For example, during the Naga Nationalist Struggle, most Angami Naga men who led it went underground. Women took charge both of the family and of their society. They also gained access to schools that were built in their area in the 1970s. As a result two thirds of the graduates among them are women. However, men continue to demand adherence to their customary law according to which the husband has to be better educated than the wife. Since there are relatively few educated young men among them, a large number of women remain unmarried (Kekrieseno 2002: 182-184). The State too seems to take the man as the breadwinner though two thirds of their graduates are women. 75 percent of the persons having a salaried job in the administration are men (Fernandes and Barbora 2002: 108-112).

Another example of modernising the tradition and consolidating social power is elections to the legislature. For over a decade after its formation, Meghalaya did not have a single woman legislator though all three of its major tribes are matrilineal. At present it has 3 or 4 in a total of 60. But for one Rajya Sabha member Ms Rano Shaiza in the 1970s, Nagaland has not had a single member of Parliament or of the State legislature. Some women wanted to contest the parliamentary elections in 2004 but they were dissuaded from doing so in the name of their customary law that confers all political power on men. Even the DACs have not had any women members. A few who contested the Karbi DAC but could not win (Fernandes, Pereira and Khatso 2005: 97-98).

Religious conversion can add to men's power but it remains ambiguous. Both Hinduism to which sections of tribes like the Boro and Adivasi have converted (Roy 1995) and Christianity that many tribal groups have embraced in recent decades are male dominated. There is, however, a difference between the two. Being a religious body with an organised structure, Christian churches have gone beyond religion to education. Access to schools depends on the situation of each tribe. As stated above, Angami women gained access to them because in the 1970s when many schools entered their area, a large number of men had gone underground. Since Hinduism lacks such structures and investment on education has been low, relatively few schools were opened among them and women's access to education was limited. Despite religious change, Garo access to schools is less than that of the Angami. It is true particularly of women. Where there was access to education, for

example among the Angami, women have gained greater awareness of their rights but men continue to interpret the customary law in their own favour. Thus, it is not religious change as such but the access they gained to education after it that has made some change possible (Fernandes and Barborá 2002: 171-172). Because of this divide between the religious and secular spheres women gain access to education without necessarily becoming equal in the Churches.

## **CONCLUSION**

In the discussion on the tribal customary law as intrinsic to their culture this paper has tried to identify the impact of the interface of the customary law with the formal on their culture of community ownership, relatively high women's status and equity. The contention of this analysis is not that modernisation should be abandoned but only that a new system cannot be imposed on an old one without looking at the principles on which the latter is built. Secondly, one cannot absolutise or romanticise the elements of past such as community ownership. For modernisation to be just, one has to begin with their triple value system of equity, resource sustainability and women's status and push them towards class and gender equality.

In practice, instead of taking the tribes towards such equity many modern inputs introduce class formation, strengthen patriarchy and force their communities to make a transition from their constructive to a destructive dependence on the natural resources. It shows that if measures are not taken to counter these impacts, modern inputs can modernise the negative aspects of their tradition. For example, a hierarchy existed in most tribes but every family was provided access to the resources and social systems required for its sustenance. That hierarchy seems to have taken the form of a ruling economic class. That discrepancy can be avoided if one begins not with their customary law understood as rules and regulations but with the value system guiding it. Its objective is to take it towards the type of equity meant for today's society. In other words, the solution lies neither in imposing modernisation nor in romanticising their past. One has to find ways of building a future on their past values by adapting them to the present

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